

THE HONORABLE LONNY R. SUKO

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

AMERICAN CASUALTY CO. OF  
READING, PA,

Plaintiff,

v.

OASIS PHYSICAL THERAPY,  
PLLC, a Washington corporation, and  
LANCE and MINDI IRVINE,  
individually and on behalf of their  
marital community and RAFAT and  
YVONNE SHIRINZADEH,  
individually and on behalf of their  
marital community, KELLY COX,  
SUSAN TABER and ANGELA  
HART,

Defendants.

No. CV-08-5077 LRS

DEFENDANTS COX, TABER,  
AND HART'S ANSWER TO  
PLAINTIFF'S COMPLAINT  
FOR DECLARATORY  
JUDGMENT

Defendants Kelly Cox, Susan Taber, and Angela Hart (collectively "Cox"),  
by and through their attorneys of record, respond to Plaintiff American Casualty  
Co. of Reading, PA ("American Casualty") as follows:

**I. NATURE OF THE ACTION**

1. Cox admits this is a complaint for declaratory relief and that disputes  
exist between the parties regarding whether there is coverage for the claims

1 asserted in these underlying actions. Cox denies there is an actual controversy as  
2 to the rights and duties of Cox under the policies referenced in this paragraph.

## 3 **II. PARTIES**

4 2. Admit.

5 3. Admit.

6 4. Admit.

7 5. Admit.

8 6. Admit.

9 7. Admit.

10 8. Cox admits that Kelly Cox has resided in Franklin County. Cox  
11 denies the remaining allegations set forth in this paragraph.

12 9. Admit.

13 10. Admit.

## 14 **III. JURISDICTIONAL ALLEGATIONS**

15 11. Cox lacks information and belief regarding the allegations in the  
16 first sentence of this paragraph. In answer to this paragraph's second sentence,  
17 Cox denies there is an actual controversy as to the rights and duties of Cox under  
18 the policies referenced in this paragraph. Cox lacks knowledge or information  
19 sufficient to form a belief about the truth of the allegations as to Oasis Physical  
20 Therapy PLLC, Mindi Irvine, Lance Irvine, Rafat Shirinzadeh, and Yvonne  
21 Shirinzadeh and therefore denies the same.

22 12. Admit that American Casualty is a citizen of Pennsylvania and that  
23 none of the Defendants are citizens of Pennsylvania. Admit that jurisdiction is  
24 appropriate in the United States District Court for the Eastern District of  
25 Washington. Deny all other allegations in this paragraph.  
26

1           13. Admit that venue is proper in this Court. Admit that the alleged acts  
2 or omissions giving rise to the underlying actions against the individual  
3 defendants OPT, Mindi Irvine, Lance, Irvine, Rafat Shirinzadeh and Yvonne  
4 Shirinzadeh occurred in Franklin County, Washington. Cox lacks knowledge or  
5 information sufficient to form a belief about the truth of the remaining allegations  
6 in this paragraph and therefore denies the same.

#### 7   **IV. GENERAL ALLEGATIONS**

##### 8           **A. The Policies**

9           14. Admit that the policy described in this paragraph speaks for itself.  
10 To the extent this description differs from the policy itself, Cox denies these  
11 allegations.

12           15. Admit that the policy described in this paragraph speaks for itself.  
13 To the extent this description differs from the policy itself, Cox denies these  
14 allegations.

15           16. Admit that the policy described in this paragraph speaks for itself.  
16 To the extent this description differs from the policy itself, Cox denies these  
17 allegations.

18           17. Admit that the policy described in this paragraph speaks for itself.  
19 To the extent this description differs from the policy itself, Cox denies these  
20 allegations.

##### 21           **B. Relevant Policy Provisions**

22           18. Admit that the policy described in this paragraph speaks for itself.  
23 To the extent this description differs from the policy itself, Cox denies these  
24 allegations. Admit that the policy provisions referenced in this paragraph speak  
25 for themselves. To the extent the policy provisions differ from those referenced,  
26

1 Cox denies these allegations. Cox denies the remaining allegations in this  
2 paragraph.

3 19. Admit that the policy provisions excerpted in this paragraph speak  
4 for themselves. To the extent these provisions differ from the policy itself, Cox  
5 denies these allegations.

6 20. Admit that the policy provisions excerpted in this paragraph speak  
7 for themselves. To the extent these provisions differ from the policy itself, Cox  
8 denies these allegations.

9 21. Admit that the policy provisions excerpted in this paragraph speak  
10 for themselves. To the extent these provisions differ from the policy itself, Cox  
11 denies these allegations.

12 22. Admit that the policy provisions excerpted in this paragraph speak  
13 for themselves. To the extent these provisions differ from the policy itself, Cox  
14 denies these allegations.

15 23. Admit that the policy provisions excerpted in this paragraph speak  
16 for themselves. To the extent these provisions differ from the policy itself, Cox  
17 denies these allegations.

18 24. Admit that the policy provisions excerpted in this paragraph speak  
19 for themselves. To the extent these provisions differ from the policy itself, Cox  
20 denies these allegations.

21 25. Admit that the policy provisions excerpted in this paragraph speak  
22 for themselves. To the extent these provisions differ from the policy itself, Cox  
23 denies these allegations.

24 **C. The Underlying Actions**

25 26. Admit that Defendants OPT, Mindi Irvine, Lance Irvine, Rafat  
26 Shirinzadeh and Yvonne Shirinzadeh are currently defendants in the underlying

1 actions. Admit that the complaints described in this paragraph speak for  
2 themselves. To the extent this description differs from the complaints  
3 themselves, Cox denies these allegations.

4 27. Admit that the complaint described in this paragraph speaks for  
5 itself. To the extent this description differs from the complaint itself, Cox denies  
6 these allegations. Admit that the amended complaint described in this paragraph  
7 speaks for itself. To the extent this description differs from the amended  
8 complaint itself, Cox denies these allegations. Admit that Kelly Cox worked for  
9 OPT as a physical therapy assistant.

10 28. Admit that the amended complaint described in this paragraph  
11 speaks for itself. To the extent this description differs from the amended  
12 complaint itself, Cox denies these allegations.

13 29. Admit that the amended complaint described in this paragraph  
14 speaks for itself. To the extent this description differs from the amended  
15 complaint itself, Cox denies these allegations.

16 30. Admit that the amended complaint described in this paragraph  
17 speaks for itself. To the extent this description differs from the amended  
18 complaint itself, Cox denies these allegations.

19 31. Admit.

20 32. Admit.

21 33. Admit.

22 34. Admit that the second amended complaint described in this  
23 paragraph speaks for itself. To the extent this description differs from the second  
24 amended complaint, Cox denies these allegations. Admit supplemental briefing  
25 was filed on the summary judgment motions. Admit the supplemental briefing  
26

1 described in this paragraph speaks for itself. To the extent this description differs  
2 from the supplemental briefing itself, Cox denies these allegations.

3 35. Admit.

4 36. Admit that the Taber lawsuit was filed in Franklin County Superior  
5 Court on June 11, 2008. Admit that Ms. Taber is a former patient of OPT. Admit  
6 that the complaint described in this paragraph speaks for itself. To the extent this  
7 description differs from the complaint itself, Cox denies these allegations.

8 37. Admit that the complaint described in this paragraph speaks for  
9 itself. To the extent this description differs from the complaint itself, Cox denies  
10 these allegations.

11 38. Admit that the complaint described in this paragraph speaks for  
12 itself. To the extent this description differs from the complaint itself, Cox denies  
13 these allegations.

14 39. Admit that the complaint described in this paragraph speaks for  
15 itself. To the extent this description differs from the complaint itself, Cox denies  
16 these allegations.

17 40. Admit that the complaint described in this paragraph speaks for  
18 itself. To the extent this description differs from the complaint itself, Cox denies  
19 these allegations.

20 41. Admit that the complaint described in this paragraph speaks for  
21 itself. To the extent this description differs from the complaint itself, Cox denies  
22 these allegations.

#### 23 **D. The Washington Department of Health Proceedings**

24 42. Admit that Rafat Shirinzadeh and Mindi Irvine became the subject of  
25 regulatory proceedings before the Washington Department of Health, Board of  
26 Physical Therapy. Admit that the proceedings were initiated as a result of

1 complaints by numerous patients and employees of OPT. Admit that these  
 2 complaints included complaints that Shirinzadeh had engaged in sexual  
 3 misconduct while providing physical therapy to patients and employees. Deny  
 4 the remaining allegations in this complaint.

5 43. Admit the DOH suspended Shirinzadeh's license for three years.  
 6 Admit that Exhibit D referenced in this paragraph speaks for itself. To the extent  
 7 Exhibit D differs from DOH's actual order, Cox denies these allegations. Cox  
 8 denies the remaining allegations in this paragraph.

9 44. Admit.

#### 10 **E. American Casualty's Reservation of Rights and Defense**

11 45. Admit.

12 46. Admit that American Casualty has refused to defend Lance Irvine  
 13 and Yvonne Shirinzadeh. Cox lacks knowledge or information sufficient to form  
 14 a belief about the truth of the remaining allegations.

15 47. Cox denies that there is any actual controversy as to the rights and  
 16 duties of Cox under the policies referenced in this paragraph. Cox lacks  
 17 sufficient information and belief to respond to the paragraph's remaining  
 18 allegations and therefore denies the same.

#### 19 **Count I**

20 **(For a Declaration That American Casualty Does Not Owe a Duty to Defend**  
 21 **Lance Irvine and Yvonne Shirinzadeh in Any of the Underlying Actions)**

22 48. Paragraph 48 does not require an answer.

23 49. The allegations in this paragraph assert legal conclusions to which a  
 24 response is not required and Cox denies the same.

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26 //

**Count II**

**(For a Declaration That American Casualty Does Not Owe a Duty to Defend OPT, Mindi Irvine and/or Rafat Shirinzadeh in the Cox Action)**

50. Paragraph 50 does not require an answer.

51. The allegations in this paragraph assert legal conclusions to which a response is not required and Cox denies the same.

52. The allegations in this paragraph assert legal conclusions to which a response is not required and Cox denies the same.

**Count III**

**(For a Declaration That American Casualty Does Not Owe a Duty to Defend OPT, Mindi Irvine and/or Rafat Shirinzadeh in the Taber Action)**

53. Paragraph 53 does not require an answer.

54. The allegations in this paragraph assert legal conclusions to which a response is not required and Cox denies the same.

55. The allegations in this paragraph assert legal conclusions to which a response is not required and Cox denies the same.

**Count IV**

**(For a Declaration That American Casualty Does Not Owe a Duty to Defend OPT, Mindi Irvine and/or Rafat Shirinzadeh in the Hart Action)**

56. Paragraph 56 does not require an answer.

57. The allegations in this paragraph assert legal conclusions to which a response is not required and Cox denies the same.

58. The allegations in this paragraph assert legal conclusions to which a response is not required and Cox denies the same.

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**Count V**

**(For a Declaration That the Claims Alleged Against OPT, Mindi Irvine and/or Rafat Shirinzadeh in the Cox Action Are Not Covered Under the American Casualty Policy)**

59. Paragraph 59 does not require an answer.

60. Deny.

**Count VI**

**(For a Declaration That the Claims Alleged Against OPT, Mindi Irvine and/or Rafat Shirinzadeh in the Taber Action Are Not Covered Under the American Casualty Policy)**

61. Paragraph 61 does not require an answer.

62. Deny.

**Count VII**

**(For a Declaration That the Claims Alleged Against OPT, Mindi Irvine and/or Rafat Shirinzadeh in the Hart Action Are Not Covered Under the American Casualty Policy)**

63. Paragraph 63 does not require an answer.

64. Deny.

**V. DECLARATORY RELIEF**

Cox denies that American Casualty is entitled to the relief it seeks.

**VI. AFFIRMATIVE DEFENSES**

1. American Casualty has failed to state a claim upon which relief can be granted.
2. Estoppel, laches, unclean hands, and waiver.
3. American Casualty has failed to join a necessary party as required by Fed. R. Civ. P. 19. Specifically, other non-joined parties have an interest in the outcome of this action and thus should be joined in this action.

1 4. American Casualty's suit for declaratory relief is both premature and  
2 prejudicial to the underlying actions, as discovery and determinations of fact in  
3 dispute in this action will harm and/or bind Cox in the underlying actions.  
4 Therefore, this suit should be stayed pending the outcome of the underlying  
5 actions.

6 5. American Casualty has acted in bad faith.

7 6. Defendants Cox, Taber, and Hart are not proper parties to this action.

8 **VII. RELIEF REQUESTED**

9 Defendants Cox request the Court grant the following relief:

- 10 A. Dismissal of the Complaint with prejudice;  
11 B. Award Cox their reasonable attorneys' fees and costs;  
12 C. Permit amendments to this pleading as necessary to conform to evidence  
13 presented at trial; and  
14 D. Such other relief as this Court finds appropriate.

15  
16 DATED this 23rd day of March, 2009.

17 TERRELL MARSHALL & DAUDT PLLC

18  
19 By: /s/ Beth E. Terrell, WSBA #26759

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26 Telephone: (206) 816 - 6603

*Attorneys for Defendants Susan Taber, Kelly Cox  
and Angela Hart*

**CERTIFICATE OF SERVICE**

I, Beth E. Terrell, hereby certify that on March 23, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Carl E. Forsberg  
William C. Gibson  
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901 FIFTH AVE., Suite 1700  
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cmertens@mmslegal.com

And I hereby certify that I forwarded via U.S. mail the foregoing to the following non-CM/ECF participants:

Rafat and Yvonne Shirinzadeh  
4616 West Wernett Road  
Pasco, WA 99301

1 DATED this 23rd day of March, 2009.

2 TERRELL MARSHALL & DAUDT PLLC

3 By: /s/ Beth E. Terrell, WSBA #26759

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